

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary  
Immediate Suspension of the Family  
Child Care License of Diane Ewing

**FINDINGS OF FACT, CONCLUSIONS  
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Linda F. Close, on July 17, 2006 at the Sherburne County Attorney's Office, 13880 Highway 10, Elk River MN 55330. The record closed at the end of the hearing day.

Kathleen Heaney, Sherburne County Attorney, 13880 Highway 10, Elk River, MN 55330 appeared on behalf of the Department of Human Services (the Department) and Sherburne County Social Services (the County).

Diane Ewing (the Licensee), 18509 County Road 14, Big Lake MN 55309, appeared on her own behalf without counsel.

**STATEMENT OF THE ISSUES**

Should the temporary immediate suspension of the Licensee's family child care license remain in effect, pending a final order, based on the existence of reasonable cause to believe that the Licensee's actions or failure to comply with applicable law poses an imminent risk of harm to the health, safety, or rights of persons served by the program?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Diane Ewing, the Licensee, has held a license to provide child care since October 1999.<sup>[1]</sup> Her license allows her to care for up to 10 pre-school

children, two of whom may be infants or toddlers, but only one of whom may be an infant. She has provided care in her home located in Big Lake, Minnesota.<sup>[2]</sup>

2. In August 2000, the minor child N and her sister began receiving child care in the Licensee's home.<sup>[3]</sup> She remained in care there until 2004.<sup>[4]</sup> N and her sister received day care from 5:00 a.m. or 5:30 a.m. until 3:00 p.m. or 3:30 p.m. in 2000, 2001, and 2003. In 2002 and 2004, the Licensee provided weekend respite care for the minor child N and her sister.<sup>[5]</sup> During respite care, N and her sister stayed at the Licensee's home from Friday evening until Sunday noon.<sup>[6]</sup> The minor child N's family moved in 2004, and the Licensee ceased providing care at that time.<sup>[7]</sup>

3. Sometime later, the minor child N's family returned to the area.<sup>[8]</sup> On June 6, 2006, the minor child N's mother reported to the Sherburne County Sheriff's Office that N had just disclosed that the Licensee's husband, Dean Ewing, had sexually abused her. According to N, the abuse had occurred two years earlier, while N had been in the Licensee's care.<sup>[9]</sup> Upon receiving the report, the Sheriff's office notified Sherburne County child protective services of the report.<sup>[10]</sup>

4. A joint investigation of the alleged abuse was undertaken by Investigator Terry Paxton, Sherburne County Sheriff's Department, and Sara Stenseng, a child protection investigator with Sherburne County Social Services.<sup>[11]</sup> Ms. Stenseng is trained in the Corner House style of interview and conducted an interview with the minor child N. The interview was audio and video recorded on a DVD that was presented at the hearing.<sup>[12]</sup>

5. During the interview, N stated that the abuse occurred in the living room of the Licensee's home while N, her sister, the Licensee's three children, the Licensee, and Dean Ewing were all watching movies on television. According to N, Dean Ewing sat on the couch next to N on her left side, reached across his own and N's body, pulled down N's pants, and digitally penetrated N's vagina. N stated that this happened on more than one occasion when the entire group watched movies on television. N further stated that no one in the room noticed because a blanket covered the lower bodies of Dean Ewing and herself. Others sat on the couch with Dean Ewing and N, but no one was aware of this happening, according to N. In addition, N said, Dean Ewing forced N to touch his penis while Dean Ewing was clothed. This also happened under the blanket, N said.<sup>[13]</sup>

6. During the interview, N also related that she had been sexually abused by M, who was a teenager, when N was 6 years old.<sup>[14]</sup> According to N, that abuse occurred when N and M were riding in a car with N's sister, M's mother, and N's mother. N described sitting on M's lap with a blanket covering them. The abuse evidently occurred at that time. N related to the investigator that M went to jail because of the incident.<sup>[15]</sup>

7. Investigator Paxton interviewed Dean Ewing about the allegations, and the content of the interview was described in the County's case management chronology submitted at hearing.<sup>[16]</sup> Dean Ewing confirmed that he had sometimes watched movies with the family when N and her sister stayed overnight in the Licensee's home for respite care. He could not rule out having sat on the couch next to N on some occasion, and he admitted that they sometimes used blankets while sitting on the couch, but he denied the allegations of sexual contact. Dean Ewing knew about N's history with M. He suggested that N's allegations against himself might stem from that history. He agreed to take a lie detector test.<sup>[17]</sup> He has not been charged with a crime in connection with N's allegations.<sup>[18]</sup>

8. The Licensee was present with N, her sister, and the Licensee's three children when they all watched movies together in the evening. In addition to the couch, which seated four, there was one chair in the room. Since there were only five places to sit, two of the group always had to sit on the floor. The Licensee confirmed that the group sometimes used blankets while they watched movies. The Licensee confirmed that Dean Ewing was also present at times, but the Licensee never left the children alone with Dean Ewing. She never saw any conduct like that described by N and does not believe it could have happened.<sup>[19]</sup>

9. Dean Ewing's past includes a history of drug and alcohol abuse. He twice assaulted Diane Ewing—in 1990 and 1992—resulting in a sentence of a year's probation. In 1991, when he had lost his job, he was convicted on theft charges for failing to notify the bank that it had erroneously credited his bank account with a \$3,020.00 deposit, rather than the actual deposit amount of \$302.00. In August 1995, Dean Ewing changed his life due to an experience at religious revival meetings he attended. He quit drinking and using drugs, and he has been "clean and sober" since then.<sup>[20]</sup>

10. On June 8, 2006, the County recommended to the Department a temporary immediate suspension of the Licensee's family child care license.<sup>[21]</sup> On June 12, 2006, the Department issued an Order of Temporary Immediate Suspension.<sup>[22]</sup> The Licensee appealed the suspension. Upon agreement of the parties and with the consent of the ALJ, the hearing was continued from July 5, 2006, to July 17, 2006.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS**

1. The Commissioner and the Administrative Law Judge have jurisdiction in this matter under Minnesota law.

2. The Department gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

3. The hearing on a temporary immediate suspension is limited to a consideration of whether the temporary suspension should remain in effect pending the Commissioner's final decision. <sup>[23]</sup>

4. At hearing, the burden of proof is on the Department to show that reasonable cause exists to believe that the license holder's action or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program. <sup>[24]</sup>

5. The Department has not demonstrated reasonable cause to believe that violations of the family child care licensing laws and rules have occurred.

6. The Department has not demonstrated reasonable cause to believe that there is a risk of imminent harm to the health or safety of children served by the Licensee.

7. The Memorandum that follows explains the reasons for these Conclusions.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

Based upon these Conclusions, the Administrative Law Judge recommends that: the Order of Temporary Immediate Suspension suspending the family child care license of Diane Ewing be REVERSED.

Dated: July 26, 2006

s/Linda F. Close

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Linda F. Close

Administrative Law Judge

Reported: Taped, 3 tape(s)  
No transcript prepared

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of

Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this report to file Exceptions to the report. At the end of the exceptions period, the record will close. The Commissioner then has 10 working days to issue his final decision. Parties should contact Cal Ludeman, acting Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651) 431-2907, to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

The Department has the burden of demonstrating that reasonable cause exists for the temporary immediate suspension of the Licensee's family child care license. The Department may demonstrate reasonable cause for the suspension by submitting statements, reports, or affidavits to substantiate the allegation that the Licensee violated the rules and statutes governing the license.<sup>[25]</sup> Here, the Department submitted the testimony of the license worker and the child protection investigator who interviewed the minor child N; the recorded and transcribed versions of the interview with the minor child N; and the investigation notes referencing the interview with Dean Ewing. The Department also submitted the Licensee's entire licensing record.<sup>[26]</sup>

The reasonable cause standard is slight, presumably to assure that vulnerable children are protected pending a full hearing and final decision on the matter. Although the Department's burden is modest, the evidence presented must be credible.

The ALJ finds reasonable cause lacking because the minor child N's account of the allegations is intrinsically unbelievable. According to the minor child, the sexual contact took place in the same room where the alleged perpetrator's three children, the Licensee, and N's sister sat watching television. She reported that Dean Ewing removed her outerwear, then her underwear, and proceeded to digitally penetrate her vagina repeatedly while everyone was watching television. All this she said happened without notice of anyone else in the room because the lower halves of her body and Dean Ewing's body were covered by a blanket. She further stated that the penetration was done as Dean Ewing sat on her left side, reached across his own and her body with his left arm, and penetrated her with his left hand. This happened more than once, according to N, yet not one person in the room noticed. This account simply cannot be credited.

It should also be noted that nearly two years elapsed between the time the alleged contact took place and the time of the report. In addition, N had previously reported sexual abuse by a teenage perpetrator. The investigator did not explore that alleged abuse in any detail. However, the allegations in the two separate incidences are noticeably similar.

The ALJ is mindful of the Department's slight burden in a temporary immediate suspension case. If the case were doubtful, it would certainly be appropriate to err on the side of caution and affirm the temporary suspension. Here, however, the fundamental implausibility of N's story precludes that.

**L. F. C.**

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- [1] Testimony of Heather Knutsen (Knutsen Testimony).  
[2] Ex. A, pp. 34-38.  
[3] Ex. A, p. 94.  
[4] Testimony of Diane Ewing (Licensee Testimony); Ex. A, p. 92.  
[5] Knutsen Testimony; Licensee Testimony.  
[6] Licensee Testimony.  
[7] Licensee Testimony.  
[8] The Licensee testified to this, but the record is unclear when the family returned to the area.  
[9] Testimony of Sara Stenseng (Stenseng Testimony); Ex. A, p. 6.  
[10] Knutsen Testimony; Ex. A., p. 27.  
[11] Stenseng Testimony; Ex. A. p.  
[12] Ex. B. The interview was transcribed and the transcription is found at Ex. A. pp. 98-120.  
[13] Ex. B.  
[14] In 2004, N would have been 8 years old.  
[15] Ex. B.  
[16] Ex. A. p. 3.  
[17] Ex. A. p. 3.  
[18] Licensee Testimony.  
[19] Licensee Testimony.  
[20] Ex. A, pp. 70-72.  
[21] Ex. A., p. 25.  
[22] Ex. A, p. 23.  
[23] Minn. Stat. § 245A.07, subd. 2a (a).  
[24] Minn. Stat. § 245A.07, subd. 2a (a).  
[25] Minn. Stat. § 245A.08, subd. 3.  
[26] See Ex. A.